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MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
700 Lavaca, Suite 800
Austin, TX 78701

In re Application of
PINTO, Yigal M.
U.S. Application No.: 10/575,745
PCT No.: PCT/EP2004/010879
Int. Filing Date: 27 September 2004
Priority Date: 09 October 2003
Attorney's Docket No.: 604-00100
For: METHOD FOR IDENTIFYING A SUBJECT
AT RISK OF DEVELOPING HEART
FAILURE BY DETERMINING THE
THE LEVEL OF GALECTIN-3 . . .

DECISION

This is a decision on the papers filed on 09 July 2007 which are treated as a petition under 37 CFR 1.181. No fee is required.

BACKGROUND

On 09 February 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that additional claim fees, an oath or declaration and a surcharge fee was required. A two-month time period for response was set with extensions of time available.

On 09 April 2007, applicant filed a response which was accompanied by, *inter alia*, a \$130.00 surcharge fee and authorization to charge any fees to Deposit Account No. 50-1505. An executed declaration was listed as one of the papers submitted but has not been located in the file.

On 14 May 2007, the DO/EO/US mailed a Notification of a Defective Response (Form PCT/DO/EO/916) indicating that certain fees and a declaration in compliance with 37 CFR 1.497(a) and (b) was required. Applicant was given one month or the extendable time remaining in the Form PCT/DO/EO/905.

On 09 July 2007, applicant filed a response which was accompanied by, *inter alia*, a preliminary amendment, amended claims, a copy of the declaration filed 09 April 2007, a date-stamped postcard receipt for the 09 April 2007 filing, authorization to charge \$200.00 for an independent claim fee and any other required fees to Deposit Account No. 50-1505.

DISCUSSION

Applicant claims that an executed declaration was submitted on 09 April 2007 along with the \$130.00 surcharge fee. A review of the subject application shows that the declaration purportedly filed 09 April 2007 was not located in the file.

MPEP § 503 lists procedures to ensure receipt of any paper filed in the USPTO. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

In this case, applicant provided a copy of the date-stamped postcard receipt for the documents submitted 09 April 2007. The postcard receipt records that an "Originally executed Declaration (2 pages)" were received in the USPTO. The postcard receipt is stamped "Rec'd PCT/PTO 09 APR 2007" across its face. The U.S. application number, attorney docket number, filing date and name of inventor were listed on the postcard receipt.

Accordingly, applicant has provided *prima facie* evidence that a declaration was originally received by the USPTO on 09 April 2007.

DECISION

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

The declaration filed 09 April 2007 is in compliance with 37 CFR 1.497(a) & (b). The \$130.00 surcharge fee was paid.

This application is being forwarded to the Office of Patent Application Processing for continued processing.


James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302